

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No.2001-483

August 5, 2003

COMPETITIVE ENERGY SERVICES, LLC
Application for License to Operate as a
Competitive Electricity Provider (Request for
Continuation of Waiver)

ORDER APPROVING
WAIVER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we grant Competitive Energy Services, LLC (CES or the Company) a continued waiver of Section 2(B)(1)(a)(ii) of Chapter 305 of the Commission's Rules thereby allowing it to maintain its required security instrument, in this case a Letter of Credit, at \$10,000.

II. BACKGROUND & DECISION

On October 4, 2001, we issued an Order Amending the License of CES to operate in Maine as a competitive electricity provider pursuant to Chapter 305. This amendment allowed CES to expand the scope of its original license from that of an aggregator/broker, as defined in Chapter 305, to that of a competitive electricity supplier for all classes of customers in the service territories of Central Maine Power Company (CMP, Bangor Hydro-Electric Company (BHE) and Maine Public Service Company (MPS). This change necessitated that CES post either a Surety Bond or a Letter of Credit in order to satisfy Section 2 (B)(1)(a)(i) of Chapter 305 of the Commission's Rules.

Section 2(B)(1)(a)(i) of Chapter 304 states that "a license will not be issued or remain in force until the applicant or licensee furnishes a surety bond or letter of credit" meeting the requirements of that rule. The initial security level s set by Section 2(B)(1)(a)(ii) at \$100,000. That provision of the rule allows the Commission to modify that amount if requested by a license applicant "commensurate with the nature and scope of the business anticipated to be conducted in Maine."

CES requested that the Commission modify the requirements of Chapter 305 to waive the initial \$100,000 security requirement, "conditioned on CES not accepting deposits from customers to whom it provides electricity service." CES explained that "it may take a number of months before CES is able to achieve {a} level of market penetration" that would justify the \$100,000 initial security level. It was ultimately agreed that an initial security level of \$10,000 was sufficient, conditioned upon CES's notifying the Commission if it determined that revenues from residential and small commercial customers in Maine would exceed \$100,000. We concluded that CES's

agreement to seek modification of the initial security level to \$10,000 met the criteria established in Section 2(B)(1)(a)(ii) of Chapter 305, and granted CES's request.

On May 6, 2003, CES notified the Commission that it was projecting annualized revenues "approaching \$800,000" from residential and small commercial customers but requested that the security amount (its Letter of Credit) remain at \$10,000. CES felt that its request was justified based on: (1) the relative price spread between its primary product offering and the Standard Offer (SO) prices for residential customers in the service territories it serves (CMP and BHE); (2) the Company is not taking customer deposits or offering budget payment plans (which could function as a type of customer deposit); and, (3) that some 750 "small commercial" accounts could actually be considered a single medium or large commercial account.

Regarding the first two points, CES has enrolled roughly 800 residential customers in its Maine Renewable Energy (MRE) offering and has not taken deposits nor does it offer a budget payment plan. Based on an annual usage rate per customer of 5,000kWh, CES projects annual revenues from its offering to residential customers of approximately \$260,000. This product is from 100% renewable generation resources within the state of Maine and, at \$0.065 per kilowatt-hour (kWh), is priced at a premium to residential SO rates of \$0.0495 and \$0.0500 per kWh in CMP and BHE territories respectively. The primary purpose of the security instrument (in this case the Letter of Credit) is to offset the negative effects on residential customers if CES defaults on its energy delivery obligation and a substitute supplier is required. In the case of a CES default for this class of customers, they would simply return to SO service at a lesser rate per kWh, would not suffer the loss of a security deposit and thus would not be harmed.

Regarding the third point, CES maintains that it has enrolled approximately 750 accounts of the State of Maine with various offices and agencies within the territories of CMP and BHE. The Company projects annual revenues for its "State Account" at roughly \$520,000. If considered individually these accounts could be considered small commercial customers, however taken together with an estimated annual usage of 8 million kWh and coincident demand of roughly 1.8 megawatts (MW), this "State of Maine account" is clearly not a small customer.¹ CES notes that its contract with the State has a "hold harmless" provision protecting it from any negative impact of returning to the SO, making additional security in favor of the State redundant.

In summary, CES notes that its residential customers are not at financial risk while the SO rate is below the rate they are offering and while no customer deposits are being collected and that the State of Maine is not a customer that Section 2(B)(1)(a)(i) of chapter 305 is meant to safeguard. We agree with CES and approve its request subject to several conditions:

¹ "Small" Commercial customers are defined as those with demand of 20KW, 25KW and 50KW in CMP, BHE and MPS territories respectively.

- (1) The Company may not collect security deposits from its customers or offer a budget payment plan without further Commission review of whether the size of its Letter of Credit or Surety Bond (as applicable) is sufficient;
- (2) This waiver applies only as long as the rate on its MRE offering exceeds the residential SO rates in the territories it serves;
- (3) This waiver applies only as long as the Company does not offer another product to residential or small commercial customers with a rate below that of the SO rate in the territories it serves;
- (4) If (or when) the Company's annual residential/small commercial revenue is forecasted to exceed \$1 million (excluding the State of Maine account), CES shall promptly notify the Commission.

Accordingly, we

O R D E R

That CES's request of a waiver of Section 2(B)(1)(a)(ii) of chapter 305 of the Commission's rules is granted thereby allowing it to maintain its current Letter of Credit at \$10,000 subject to the conditions noted above with all other conditions noted in our prior Orders unchanged.

Dated at Augusta, Maine, this 5th day of August, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.